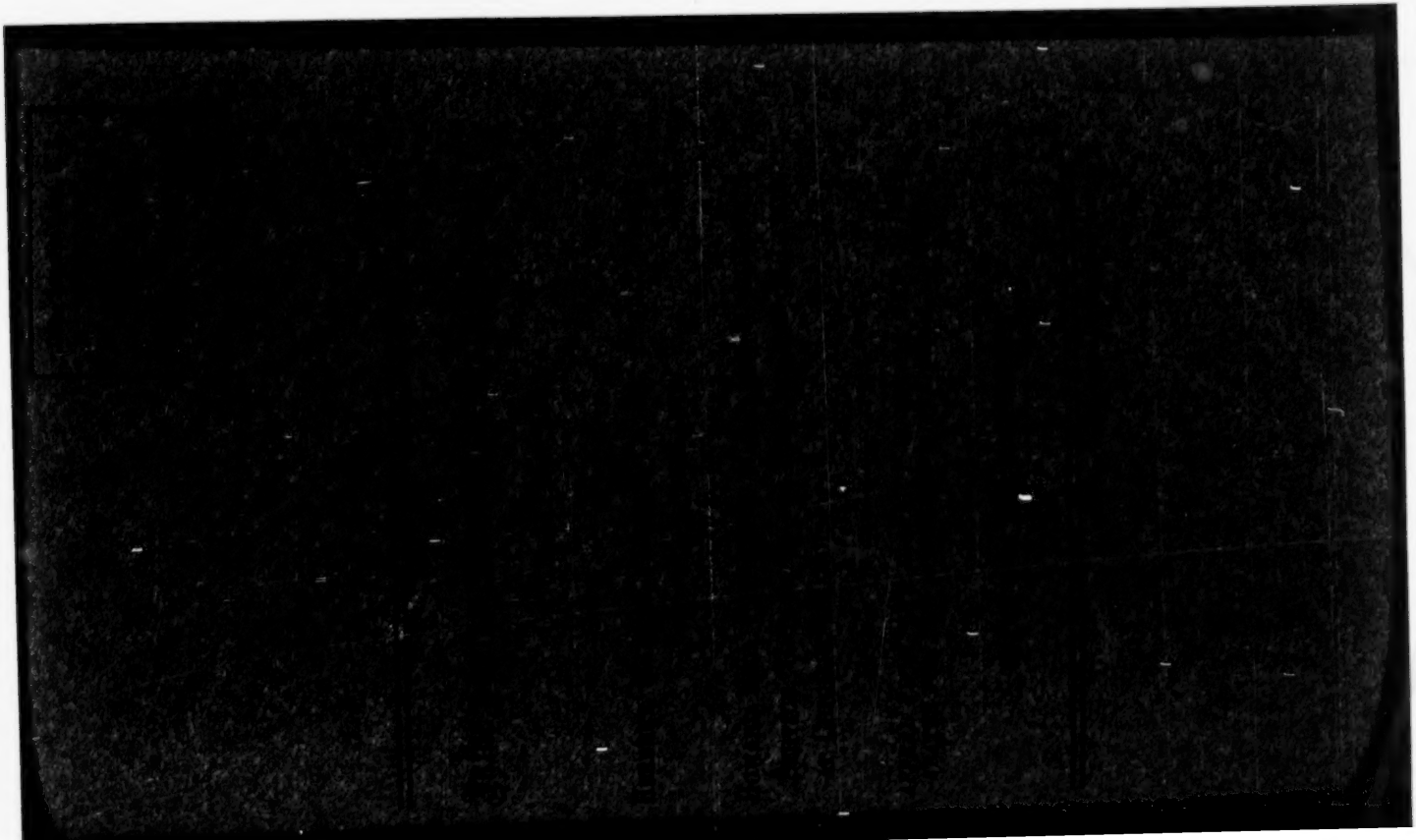

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AUTHORITIES.

Court for the Northern District of Illinois, upon an indictment containing five counts and charging violations of several acts of Congress (R. 73–100). The third count charged violation of Section 5 of the Selective Service Act of May 18, 1917, c. 15, 40 Stat. 76 (R. 96). The fourth charged a violation of Section 4 of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 217 (R. 97). The appellants were found guilty upon all five counts, but the third and fourth only are material here. All of these men save Petro Nigra were sentenced by the Court to be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for a period of five years (R. 102–105), while Nigra was sentenced to imprisonment in the same place for eighteen months (R. 106). Thereafter, upon appeal to the United States Circuit Court of Appeals for the Seventh Circuit, it was held that the first and second counts of the indictment were not good (R. 107, 268 Fed. 795). The judgment of the District Court was accordingly modified by striking out the sentences imposed under those counts, and as so modified the judgment was affirmed and became final.

While the appellants were confined in the Federal prison, the Secretary of Labor issued warrants of arrest under the Act of May 10, 1920, c. 174, 41 Stat. 593, charging that each of them was an alien who had been convicted since August 1, 1914, of a violation of the Selective Service Act and of the Espionage Act, and directing that they be taken into custody

and granted a hearing to show cause why they should not be deported. (R. 51–55.)

On June 14th and 15th, 1921, each of the appellants was granted a hearing by an Immigrant Inspector at the Federal Prison at Leavenworth, records of which will be found in the transcript, pages 56–117. After the formal proofs, the Government introduced in evidence the original indictment upon which they had been convicted (marked "Exhibit A"—R. 73–100); a certified copy of the judgment of the District Court in the same case (marked "Exhibit B"—R. 100–106); and the opinion and judgment of the United States Circuit Court of Appeals (marked "Exhibit C"—R. 107–117).

Upon the evidence produced, the Secretary of Labor on November 8th, 9th, and 10th, 1921, issued his several warrants for deportation (R. 117–122).

On May 20, 1922, petitions for writs of habeas corpus were presented to the District Court. (R. 2–18.) The writs were allowed (R. 18–25), and returns having been filed by the respondent, the causes were heard by the District Court on November 1, 1922. After hearing, the several petitions and writs were dismissed. (R. 26.) On November 4, 1922, petitions for appeal to this court were presented (R. 27–37); the appeals were allowed and the several appellants admitted to bail pending the appeal. (R. 43–46.)

The assignments of errors are identical in each case. (R. 37–43.) The contentions of the appellants, which are set forth generally therein, and more specifically in the brief filed in this Court, are as follows:

1. That the Act of May 10, 1920, c. 174, 41 Stat. 593, entitled, "An Act to deport certain undesirable aliens and to deny readmission to those deported," under which the warrant for deportation of each of these aliens was made, is unconstitutional, because, in its application to the appellants, it is an *ex post facto* law.

2. That the Selective Service Act and the Espionage Act were repealed before these deportation proceedings began, wherefore the warrants of deportation made upon the ground that the aliens had violated those acts, were void and wanting in due process.

3. That the Act of May 10, 1920, is unconstitutional, because it delegates legislative power to the Secretary of Labor, and because it is so vague, indefinite, and uncertain that deportation under it deprives appellants of due process of law.

4. That the warrants of deportation are void, because they fail to state that the Secretary of Labor has found that the aliens were "undesirable residents of the United States."

5. That in the case of Petro Nigra there was no evidence that he was convicted of a violation of any Federal law.

We shall discuss these five objections seriatim.

ARGUMENT.

I.

The act of May 10, 1920, is not an ex post facto law.

The first assignment of error (R. 37) sets forth that the Act of May 10, 1920, c. 174, 41 Stat. 593 is void because, in its application to these Appellants, it is an *ex post facto* law. The Act, which is printed in full in the Brief for Appellants (pp. 1–3), provided *inter alia*, that the following aliens may be deported:

> (2) All aliens who since August 1, 1914, have been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts, the judgment on such conviction having become final, namely:

Then follows an enumeration of eight Acts of Congress, including—

(a) The Espionage Act of June 15, 1917, and

(e) The Selective Service Act of May 18, 1917,

of the violation of which each of the Appellants had been convicted.

It appears from the record that the offenses were committed between May and September, 1917 (R. 73–100), and that the verdict of the jury was rendered on August 17, 1918 (R. 101), prior to the enactment of the Act of 1920 and the issuance of the warrants of arrest by the Secretary of Labor on June 2, 1921 (R. 51–55).

These facts do not, however, render the constitutional prohibition against *ex post facto* laws applicable

here; for it is well settled by the decisions of this Court that deportation is not a punishment and proceedings for the purpose are not criminal cases (*Fong Yue Ting* v. *United States*, 149 U. S. 698, 730; *Bugajewitz* v. *Adams*, 228 U. S. 585, 591); and that the constitutional prohibition forbids only retroactive *criminal* legislation (*Watson* v. *Mercer*, 33 U. S. 88, 110; *Carpenter* v. *Pennsylvania*, 58 U. S. 456, 463; *Locke* v. *New Orleans*, 71 U. S. 172, 173; *Johannessen* v. *United States*, 225 U. S. 227, 242).

Congress did not by the Act of 1920 impose any additional penalty or punishment for the crimes theretofore committed, but merely determined that the United States no longer desired to extend its national hospitality to the class of aliens described therein.

The case upon this point is quite similar to that of *Hawker* v. *New York*, 170 U. S. 189, decided by this Court. That case involved an act passed by the legislature of New York on May 9, 1893, which provided that any person who after being convicted of a felony should practice medicine in New York State should be guilty of a misdemeanor. In 1896 the defendant was indicted under that act because he had been convicted of a felony in 1878 and had practiced medicine in New York after 1893. It was urged that the application of the statute to one who had been convicted of a felony prior to its passage rendered it *ex post facto*. The Court held, however, that the Act of 1893 did not impose any additional

penalty or punishment upon persons previously convicted, but was merely a reasonable and proper exercise of the police power, which was designed to protect the public from practicing physicians who were not of good moral character, and to that end provided that persons whose bad character had been proved by conviction of a felony should not be permitted to practice medicine.

As the Act of 1920 is not a criminal statute, the objection that it is an *ex post facto* law is not well taken.

II.

The repeal of the selective service act and of the espionage act did not affect the operation of the act of May 10, 1920.

It is urged in the third assignment of error (R. 37) that inasmuch as the Selective Service Act and the Espionage Act were repealed on March 3, 1921, no alien convicted of a violation of those acts could thereafter be deported under the Act of May 10, 1920.

It is a familiar and well-settled principle that when a criminal statute is unreservedly repealed, no one who may have violated it prior to its repeal may thereafter be further prosecuted, convicted, or punished under it. The cases cited by counsel for the appellant (Brief, pp. 21–24) fully sustain, and we do not dispute this rule. But it does not apply to this case.

The whole of the Appellants' argument upon this point is based upon the theory that the Act of 1920 is a criminal act. We may concede that if it imposed

an additional penalty for violation of the Selective Service and Espionage Acts, their repeal would effectually prevent the imposition of such penalty upon the Appellants in these proceedings begun June 2, 1921, after the repeal. But it is evident from a reading of the Act that it is not a criminal statute, but merely an Act which classified aliens and provided for their deportation. It created a class liable to deportation, consisting of all those who since August 1, 1914, had been convicted of a violation of any of the Acts of Congress recited in it. It seems almost too clear for serious argument that aliens, such as the Appellants in the instant case, who were convicted of violating the Selective Service and Espionage Acts while those Acts were in full force and effect, and who are clearly within the class rendered liable to deportation under the Act of 1920, *are not removed from that class* merely because the Acts under which they were convicted were repealed.

III.

The act of May 10, 1920, does not (a) delegate legislative power nor (b) deprive the Appellants of due process of law in violation of the Constitution.

The Act provides in its first section, that—

> Aliens of the following classes, in addition to those for whose expulsion from the United States provision is made in the existing law, shall, upon the warrant of the Secretary of Labor, be taken into his custody and deported in the manner provided in Sections 19 and 20 of

> the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States," *if the Secretary of Labor, after hearing, finds that such aliens are undesirable residents of the United States*, to wit: [Here follows an enumeration of the several classes.]

The Appellants urge that the clause of this Act which we have italicized renders the whole obnoxious to the Constitution for two reasons. First, it is said that there is an unconstitutional delegation of legislative power, because Congress has committed to the Secretary of Labor the function of determining what aliens are "undesirable residents." Second, that this clause is so vague and uncertain as to render the whole Act unconstitutional, because Congress has not provided within the Act any standard of *desirability*, according to which the Secretary of Labor may judge who are and who are not "undesirable residents"; wherefore the action of the Secretary in ordering the deportation of the Appellants was necessarily arbitrary and deprived them of liberty without due process of law. The statement of these objections shows that both rest upon the alleged uncertainty of the words "undesirable residents."

(a.)

The nature of the power to exclude or expel aliens raises a grave doubt at the outset whether the objection based upon the alleged delegation of legislative power may be urged against the Act of 1920. The

power differs fundamentally from the more ordinary and frequently exercised powers of Congress which were involved in the multitude of cases cited by the Appellants. This Court has pointed out in a number of leading cases that the power to exclude or expel aliens is an inherent and inalienable incident of national sovereignty, political in character, and vested in the political departments of the Government.

Mr. Justice Gray, speaking for the Court in *Fong Yue Ting* v. *United States*, 149 U. S. 698, 713, said:

> The power to exclude or to expel aliens, being a power affecting international relations, is vested in the political departments of the Government, and is to be regulated by treaty or by act of Congress, and to be executed by the executive authority according to the regulations so established, except so far as the judicial department has been authorized by treaty or by statute, or is required by the paramount law of the Constitution, to intervene.

And the same conclusion is stated in *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 659, *Lem Moon Sing* v. *United States*, 158 U. S. 538, 543 and *Li Sing* v. *United States* 180 U. S. 486.

The power to exclude or expel aliens is essentially a part of the control of our international affairs, with which the Executive and Congress are jointly charged.

> Subjects which are within the legislative jurisdiction of Congress may frequently touch upon or affect international relations, and in such cases it is competent for Congress to dele-

> gate to the President power with regard to such relations. So in dealing with international commerce Congress may give to the President authority to declare embargoes, and in levying tariffs it may vest in the President the power to suspend or enforce duties in his discretion in order to procure reciprocal benefits in other countries. (Burdick on The Law of the American Constitution, Sec. 35, page 79.)

Mr. Justice Harlan cited in the opinion in *Field* v. *Clark*, 143 U. S. 649, 682–692, numerous instances wherein Congress since the earliest days of the Republic had committed to the President or to executive officers acting under and responsible to him, broad discretionary powers in dealing with international commerce. Notable among these was the authority given to the President by the Act of June 4, 1794, to lay an embargo on all ships and vessels in the ports of the United States, "whenever in his opinion, the public safety shall so require," and under regulations to be continued or revoked "whenever he shall think proper"; by the Act of February 9, 1799, to remit and discontinue, for the time being, the restraints and prohibitions which Congress had prescribed with respect to commercial intercourse with the French Republic, "if he shall deem it expedient and consistent with the interest of the United States," and "to revoke such order, whenever, in his opinion, the interest of the United States shall require"; by the Act of December 19,

1806, to suspend, for a named time, the operation of the nonimportation act of the same year, "if in his judgment the public interest should require it"; and by the Act of March 6, 1866, to declare the provisions of the act forbidding the importation into this country of neat cattle and the hides of neat cattle, to be inoperative, "whenever in his judgment" their importation "may be made without danger of the introduction or spread of contagious or infectious disease among the cattle of the United States." While the decision in the case did not involve the constitutionality of these several acts, the Court expresses no doubt as to their validity. The opinion goes on to say (pp. 690–691):

> While some of these precedents are stronger than others, in their application to the case before us, they all show that, in the judgment of the legislative branch of the Government, it is often desirable, if not essential for the the protection of the interests of our people, against the unfriendly or discriminating regulations established by foreign governments, in the interests of their people, to invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations.

Another instance of the grant of broad powers over a similar subject-matter, is found in the Act of March 2, 1897, 29 Stat. 604, which made it unlawful to import tea "which is inferior in purity,

quality, and fitness for consumption to the standards" fixed and established by the Secretary of the Treasury. This Act was sustained by the Court in *Buttfield* v. *Stranahan*, 192 U. S. 470; *Buttfield* v. *Bidwell*, 192 U. S. 498; and *Buttfield* v. *United States*, 192 U. S. 499.

And in the immigration acts prior to 1920 there is to be found a grant of broad discretionary power to the executive officers to determine who are persons "likely to become a public charge." (Acts of August 3, 1882, c. 376, 22 Stat. 214; February 5, 1917, c. 29, 39 Stat. 874.) In all of the constitutional battles which have been fought over the alien laws, we have not found this a *forum belli*, and it seems obvious that there is no greater exercise of discretion necessary to determine under the Act of 1920 who are "undesirable residents," than is required to ascertain under the Act of 1917 who are "likely to become a public charge." The former may require the exercise of judgment, but the latter requires in addition some measure of the gift of prophecy.

The nature of the power to exclude or expel aliens, warrants the granting of large discretion to the executive officers. If, however, we leave out of account the peculiar character of the power and regard the Act of 1920 merely as a part of our municipal law, we think it is clearly constitutional.

Congress did all which it, as the legislative power, was obliged to do when it provided that the aliens

should be deported if found to be "undersirable residents." The duty of finding who are such, is one which may be delegated.

It is well settled that Congress may delegate to the Interstate Commerce Commission authority to determine what are reasonable rates and what are discriminatory practices, (*Interstate Commerce Commission* v. *Illinois Central Railroad*, 215 U. S. 452; *Interstate Commerce Commission* v. *Chicago, Rock Island, etc., Railroad*, 218 U. S. 88); and that similar State statutes delegating like power to public service commissions are constitutional. (*Wichita R. R.* v. *Public Utility Commission*, 260 U. S. 48). The terms "unreasonable" and "discriminatory" are no more definite in themselves or in their application to their subject matter than is the term "undesirable" when applied to aliens resident in the United States.

In the case of *Miller* v. *Strahl*, 239 U. S. 426, a statute of Nebraska provided that:

> It shall be the duty of every proprietor, or keeper of such hotel or lodging house, in case of fire therein to give notice of same to all guests and inmates thereof at once and *to do all in their power* to save such guests and inmates.

The constitutionality of this Act was attacked upon the same grounds which are urged here, but without avail for this Court held that the standard of diligence required of the hotel owner was set forth with sufficient precision.

In *Mutual Film Corporation* v. *Ohio Industrial Commission*, 236 U. S. 230, a statute of Ohio which provided that "only such films as are in the judgment and discretion of the Board of Censors of a moral, educational, or amusing and harmless character, shall be passed and approved by such Board." It was insisted that the standards fixed by the broad language of this Act were not sufficiently definite and delegated to the Board of Censors too large a measure of discretion, but the Act was sustained by this Court as a lawful and proper delegation of power. It is true, as urged by the Appellants in their brief, that two men may differ as to who are "undesirable residents of the United States," but we feel confident that there would be less divergence of opinion upon this question than upon what pictures are of a "moral, educational, or amusing and harmless character."

Whether treated as an exercise of the power to control and manage international affairs or merely as a municipal regulation, we think the Act of 1920 is not invalid as an unconstitutional delegation of legislative power.

(b.)

Nor is it so vague, uncertain, and indefinite as to deprive the Appellants of due process of law. To support the contention that the statute is unconstitutional upon this ground, counsel have cited a wealth of authorities, of which *United States* v. *Cohen Grocery Company*, 255 U. S. 81, and *International*

Harvester Company v. *Kentucky*, 234 U. S. 216, are fairly typical.

In the *Cohen Grocery Company Case* section 4 of the Food Control or Lever Act was declared unconstitutional because it penalized the making of "any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries," without fixing any measure or standard by which one might determine when a rate or charge was unjust or unreasonable. And in the *International Harvester Company Case*, an antitrust statute of Kentucky was held unconstitutional because it penalized any agreement of manufacturers formed for the purpose of enhancing the price of their products above their *real value* (which was defined as "its market value under fair competition and under normal market conditions"), but fixed no standard by which it was possible to ascertain "real value."

It is an inherent infirmity of statute law that it must be expressed in words, which at best are but an uncertain medium for the conveyance of ideas. Some words are general, others specific, and words which convey a definite meaning when related to one subject may be vague and indefinite when related to another. In *Miller* v. *Strahl*, 239 U. S. 426, 434, Mr. Justice McKenna pointed out that "Rules of conduct must necessarily be expressed in general terms and depend for their application upon circumstances, and circumstances vary." Absolute precision in the language of a statute is neither pos-

sible nor necessary, and it is not essential to the validity of an act of Congress that it carry a dictionary as a rider. As we understand the decisions in the two cases cited, an act of Congress need not embody *within itself* a precise and accurate definition of all the adjectives used in it. It is sufficient if a standard by which they may be measured or a definition of them may be found elsewhere.

The distinction between the *Cohen Grocery* and *International Harvester* cases on the one hand, and *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S. 86, *Nash* v. *United States*, 229 U. S. 373, *Fox* v. *Washington*, 236 U. S. 273, *Miller* v. *Strahl*, 239 U. S. 426, and *Omaechevarria* v. *Idaho*, 246 U. S. 343, on the other, was clearly pointed out by Mr. Chief Justice White by showing that in the former no standard could be found either in the Act of Congress *or elsewhere*, while in the latter "*either* from the text of the statutes involved *or the subjects with which they dealt*, a standard of some sort was afforded" (255 U. S. 81, 92).

Omaechevarria v. *Idaho*, 246 U. S. 343, is an illustration. There it was urged that a penal statute which forbade any person to graze sheep "on any cattle range previously occupied by cattle, or upon any range usually occupied by any cattle grower," was so indefinite in terms as to violate the Fourteenth Amendment since it failed to provide for the ascertainment of the boundaries of a "range" or for determining what length of time is necessary to constitute

a prior occupation a "usual" one within the meaning of the act. But while the standard could not be found in the act, it could be found in the customs which existed among the people living near the cattle ranges. The Act was sustained because, as Mr. Justice Brandeis said (p. 348): "Men familiar with range conditions and desirous of observing the law will have little difficulty in determining what is prohibited by it."

In the instant case, the Act of 1920 does not define "undesirable residents," it is true, but this term is well known and understood and has a precise and definite meaning to the Department of Labor and to persons familiar with immigration legislation. The limits of the concept are found in the numerous other Acts of Congress regulating immigration and providing for the exclusion and expulsion of aliens. They furnish a standard by which the "desirability" of aliens may be tested. They indicate clearly, for example, that persons who are mentally defective, or morally perverted, paupers, vagrants, persons afflicted with contagious diseases, criminals, polygamists, anarchists, those who advocate the overthrow of this Government by force, or are members of an organization which advocate such overthrow, illiterates, and a number of other classes are, in the judgment of Congress, *undesirable*.

There are in the United States to-day thousands of aliens who, measured by the present standards of desirability which Congress has established, are un-

desirable. Some entered prior to the establishment of those standards; others have become undesirables since their entry. Congress has not provided for the wholesale deportation of all of these persons, but in the Act of May 10, 1920, c. 174, 41 Stat. 593, it has described certain classes of aliens who are made liable to deportation, and has provided that of aliens of those classes the Secretary of Labor should deport such as he shall find, after hearing, to be "undesirable residents of the United States."

Accordingly in the practical administration of the Act the Secretary of Labor must determine first whether an alien falls within the classes defined by the Act of 1920, and, if this be found in the affirmative, then, whether he is an "undesirable resident." In making these findings he applies the standards fixed by Congress.

If we assume for the purposes of this case that no discretion whatever is vested in the Secretary of Labor, and that the prior acts of Congress furnish a precise and accurate definition of "undesirable" which he can not vary or extend, nevertheless the judgment of the court below must be sustained and the Appellants deported. It clearly appears from the record that these particular aliens are included within the classes enumerated in the Act of 1920, and that they are also included within those which Congress by the Act of October 16, 1918, c. 186, 40 Stat. 1012, as amended by Act of June 5, 1920, c. 251, 41 Stat. 1008, has branded as "undesirable."

Section 1 (c) of the Act of 1918 provides:

> Aliens * * * who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) The overthrow by force or violence of the Government of the United States * * * (3) the unlawful damage, injury, or destruction of property, or (4) sabotage.

It appears from the record in this case that the immigration officers had before them in evidence an indictment upon which each of the Appellants had been convicted by a jury, in which it was charged that there existed in the United States (R. 77)—

> a certain organization of persons under the name of Industrial Workers of the World, commonly called "I. W. W.'s" * * * that said defendants, during said period have been members of said organization and among those known in said organization as "militant members of the working class" and "rebels" holding various offices, employments, and agencies therein; and * * * severally have been actively engaged in managing and conducting the affairs of said association, propagating its principles by written, printed, and verbal exhortation, * * * that said organization, before and during said period of time, has been one for supposedly advancing the interests of laborers as a class (by members of said organization called "the workers" and "the proletariat"), and giving them complete control and ownership of all property * * *

> through the abolition of all other classes of society * * * such abolition to be accomplished not by political action or with any regard for right or wrong, but by the continual and persistent use and employment of unlawful, tortious, and forcible means and methods, involving threats, assaults, injuries, intimidations and murders upon the persons, and the injury and destruction * * * of the property of such other classes, the forcible resistance to the execution of all laws, and finally the forcible revolutionary overthrow of all existing governmental authority, in the United States * * *.

Here then was evidence, uncontradicted and ample to sustain a finding by the Secretary of Labor that the Appellants were in fact "undesirable residents of the United States." The aliens did not in any of the five cases offer any countervailing proof.

IV.

The warrants were valid.

It is urged, however, that the original warrants of arrest were defective in that they did not charge that the aliens were undesirable residents of the United States. They did charge that the aliens had been "found in the United States in violation of the Act of May 10, 1920," which necessarily implied the charge that they were undesirable residents. But, in any event, defects in the original warrant of arrest do not constitute a ground for discharge on *habeas corpus* from an order of deportation made after a hearing. (*Nishimura Ekiu* v. *United States*, 142 U. S. 651, 662.)

And it is further urged that the final orders of deportation are defective because they do not contain or purport to be based upon a specific affirmative finding that the aliens were "undesirable residents." We think the making of the order necessarily implied that the Secretary of Labor had found that the aliens were undesirable residents. No technical formalities are required of such orders. (*Nishimura Ekiu* v. *United States*, 142 U. S. 651.)

V.

The record contains sufficient evidence to sustain the order made against Petro Nigra.

Finally it is contended that in the case of Petro Nigra the order for deportation is void, because the record in his case contains no evidence of the fact that he had been convicted of any violation of the Selective Service Act or the Espionage Act.

It is a curious fact that in the case of this one alien the report of the hearing (R. 63–65) does not show that the indictment, verdict, etc., in the case in which he was convicted were formally offered in evidence. It does appear, however, that the hearing was held before C. H. Paul, the same inspector who conducted the hearings of the other Appellants; that it was held at the same place, at the same time; that the same stenographer took and transcribed the testimony; and that the alien was represented by the same attorney. It also appears that a stipulation was signed by counsel and filed in the District Court (R. 51) which contained the following:

It is further stipulated by and between the above-named relators and Howard D. Ebey, that the following Exhibits A, B, and C, are the Exhibits mentioned in the above testimony taken at the hearings on the warrants of arrest, *and that the same were there introduced in evidence in each case*, on behalf of the United States Department of Labor.

It is further stipulated by and between the parties that said warrants of arrest, testimony of the hearings on said warrants of arrest, attached to petitions of habeas corpus and the exhibits introduced in evidence upon said hearings marked Exhibits A, B, and C, and the warrants of deportation, *have been introduced and received in evidence* in the hearing upon said writs of habeas corpus.

Exhibits A, B, and C, referred to, were the indictment (R. 73), the verdict and the several judgments (R. 100), and the opinion of the Circuit Court of Appeals (R. 107), respectively, in the case in which Petro Nigra, with the others, was convicted. The judgment shown on page 106 of the Transcript relates to Nigra alone, and could scarcely have become a part of the record unless at some stage of the proceeding it had been introduced.

There is nothing in the Acts of Congress under which this order was made which requires the keeping of a formal record of the proceedings, and in the absence of such a requirement the failure to keep any record at all will not invalidate an order of deportation, if it be otherwise valid. (*Nishimura Ekiu* v. *United States*, 142 U. S., 651, 663.)

It is evident from the facts we have stated that at the time of the hearing the Immigration Officer had before him competent evidence to sustain the order and that the alien and his counsel were fully aware of the nature of the charge and of the evidence in the possession of the officer. The mere omission to formally note the offer of evidence upon the record can not invalidate the order made, either upon the ground of informality or because the alien was thereby deprived of due process.

CONCLUSION.

However men may differ as to the precise limitations of a definition, when the object itself is presented they have little difficulty in identifying it. The record in this case presents a picture of five aliens whom not one American citizen in a hundred would hesitate to pronounce an "undesirable resident of the United States." If the case should arise in which the Secretary of Labor abuses the discretion vested in him by the Act of 1920 and finds an alien to be "undesirable," when there is no evidence to sustain that conclusion, the courts are open and will afford relief. This record, however, presents no such case.

We respectfully submit that the judgment of the District Court should be affirmed.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

GEORGE ROSS HULL,
Special Assistant to The Attorney General.

JANUARY, 1924.